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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

James G. METZ *et al.*

Appl. No.: 08/657,749

Filed: May 30, 1996

For: **Nucleic Acid Sequences Encoding
a Plant Cytoplasmic Protein
Involved in Fatty Acyl-CoA
Metabolism**

Art Unit: 1638

Examiner: P. Bui

Atty. Docket: 16518.025

**Request for Reconsideration to Revive an Unintentionally Abandoned
Patent Application**

Assistant Commissioner for Patents
Washington, D.C. 20231

Attn: Box DAC**RECEIVED**

MAY 15 2002

OFFICE OF PETITIONS

Sir:

In the decision mailed March 12, 2002 (Paper Number 22) ("Decision"), Applicants' Petition under 37 C.F.R. § 1.137(b), filed on September 5, 2001, was dismissed. This is Applicants' request for reconsideration of the decision to dismiss the prior petition. A duplicate copy of this request is enclosed.

In the Decision, the Office of Petitions ("Office") noted in particular that two items were allegedly missing from Applicants' petition filed on September 5, 2001. The first missing item was a responsive reply to the Restriction Requirement mailed on June 23, 1998. Decision at page 3. The Decision notes that "[t]he reply submitted with the instant petition purports to elect Invention I which comprises Claims 1-13, 17, 29; but erroneously cancels Claims 4-16," and, as such is non-responsive to the Office Action. *Id.*

Applicants respectfully disagree. The Response to the Restriction Requirement filed by Applicants on September 5, 2001, directs the Examiner to cancel claims 4-16, however, it also states that the claims to be cancelled are those of Group II. Response filed September 5, 2001, at page 2. In light of this assertion, one would understand Applicants intended to elect a subset of Group I (claims 1-3, 17, and 29), and to cancel the other claims in Group I (4-13) and in Group II (14-16). However, in order to facilitate prosecution, a new response to the Restriction Requirement is filed herewith.

The Decision also alleges that the statement as required under 37 C.F.R. § 1.137(b)(3) was omitted from Applicants' Petition filed on September 5, 2001. Applicants disagree that such a statement was missing from Applicants' Petition, however, to accommodate this request, Applicants respectfully refer the Office to the Statement Required Under 37 C.F.R. § 1.137(b)(3), filed herewith.

In light of the above, Applicants assert that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional and respectfully request that the application be revived. Furthermore, Applicants respectfully submit the accompanying Response to Restriction Requirement and Statement as required by the Decision.

Applicants do not believe any fees are required to accompany this request for reconsideration. However, should any fees be deemed necessary, Applicants hereby authorize the Commissioner to charge any fee deficiency and/or credit any overpayment to our Deposit Account No. 50-1824, referencing matter no. 16518.025.

Respectfully submitted,



David R. Marsh (Reg. No. 41,408)
June E. Cohan (Reg. No. 43,741)
Holly Logue Prutz (Reg. No. 47,755)

Date: May 13, 2002

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Statement Under 37 C.F.R. § 1.137(b)(3)

Assistant Commissioner for Patents
Washington, D.C. 20231

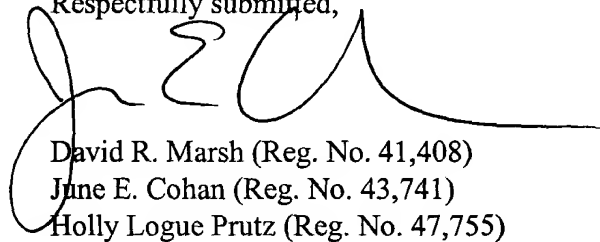
Attn: Box DAC

Sir:

As required to comply with 37 C.F.R. § 1.137 in the Petition to Revive the above-referenced patent application, Applicants assert that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

Should the Commissioner require additional information, he is invited to contact the undersigned at the number provided.

Respectfully submitted,



David R. Marsh (Reg. No. 41,408)
June E. Cohan (Reg. No. 43,741)
Holly Logue Prutz (Reg. No. 47,755)

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